DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 11-11831
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: Greg D. McCormack, Esq.

08/28/2013

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Decision

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on June 30, 2010. On December 17, 2012, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines B and E. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on January 9, 2013; answered it on January 22, 2013; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 19, 2013, and the case was assigned to an

administrative judge on March 29, 2013. Scheduling of the hearing was delayed until the first week of June 2013, because Applicant was deployed overseas. On April 25, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, scheduling the hearing for June 4, 2013. The case was reassigned to me on May 8, 2013. On May 14, 2013, DOHA issued a second notice of hearing, changing the venue for the hearing. On the same day, Department Counsel amended the SOR to add one additional allegation under Guideline E, and Applicant responded to the amended SOR on May 15, 2013. I convened the hearing on June 4, 2013, as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until June 18, 2013, to enable Applicant to submit additional documentary evidence. He timely submitted AX G and H, which were admitted without objection. The list of Government Exhibits is attached to the record as Hearing Exhibit (HX) III, and Department Counsel's comments regarding AX E and F are attached to the record as HX IV. (HX I and II are discussed below.) DOHA received the transcript (Tr.) on June 19, 2013.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Eritrea and Ethiopia. The request and supporting documents are attached to the record as HX I and II. I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶ 1.a through 1.c. He denied the allegation in SOR ¶ 2.a. He admitted SOR ¶¶ 2.b through 2.h, alleging various falsifications of two applications for public trust positions and two security clearance applications, but he denied deliberately intending to conceal information or falsify material facts. I have treated his responses to SOR ¶ 2.b through 2.h as denials. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 39-year-old information technology (IT) specialist employed by defense contractors since June 2007. On the date of the hearing, he was assigned to a military installation in Southwest Asia. (GX 2 at 14; AX A at 2.) His employer's contract expired on the day after the hearing, but the successor contractor has hired him and sponsored him for a security clearance. (AX G.) He has held a security clearance since 2005. (GX 3, Attachment 1 at 7.)

Applicant was born in Ethiopia in July 1974. When Eritrea gained its independence from Ethiopia in 1993, Applicant and his family became Eritrean citizens. He worked in a leather factory and attended college part time for three semesters in 1993-94. He testified that he and his family were persecuted because of their religion. Applicant's father was fired from his government telecommunications job, and Applicant

was jailed twice, once for about two weeks and once for about two months, because he refused on religious grounds to perform military service. A relative smuggled him to Ethiopia, where he obtained a visa, came to the United States in July 1995, and lived with an uncle who was a naturalized U.S. citizen. He requested and was granted asylum in mid-1996, and was admitted as a permanent resident in 1997. (GX 3, Attachment 1 at 1-3; Tr. 43-44.) He became a U.S. citizen in February 2004. (GX 1 at 8.)

Applicant attended a community college from January 1997 to May 2000 and received associate's degrees in networking and microcomputers. He attended a four-year college from January 2001 to May 2003 and received a bachelor's degree in computer science technology. (Tr. 40-41.) He worked for various employers after graduation. He worked for another defense contractor from April to October 2005, various non-DOD contractors from November 2005 to June 2007, and defense contractors from June 2007 to the present. (GX 1 at 17-27.)

Applicant has received numerous certificates recognizing his exceptional performance of duty. (AX C at 1-6.) His previous manager and three coworkers submitted statements describing him as dedicated, hardworking, deeply religious, honest, ethical, reliable, and devoted to his now wife and two children. (AX D at 1-4.)

Applicant's parents and one brother are citizens and residents of Eritrea. One sister recently moved from Eritrea to Kenya. (Tr. 46.) Another brother is a citizen of Eritrea residing in the United Kingdom, and another sister is a citizen of Eritrea residing in Switzerland. Applicant talks to his parents every one or two months, and he talks to his siblings every three to six months. (GX 2 at 7; Tr. 47.) In April 2013, he filed petitions for visas for his parents to enable them to immigrate to the United States. (AX B at 14-17.)

Applicant has no assets or financial interests in Ethiopia or Eritrea. He has owned a home in the United States since 2007, which is currently rented to another family while he is assigned overseas. (Tr. 64-65.) He has about $56,000 in a savings account in the United States and about $53,000 in his retirement account. (AX A at 6-7.)

Applicant married a citizen of Ethiopia on December 12, 2004. He disclosed this marriage when he was interviewed by an investigator from another government agency (AGA) in July 2005. (GX 5 at 3.)

Since coming to the United States, Applicant has traveled to Ethiopia once in 2004 to be married. He went to Eritrea twice, in 2005 to visit his family and in 2011 to attend a sister's funeral. (GX 3, Attachment 1 at 6; Tr. 48-49.)

On four successive applications (a questionnaire for public trust positions dated December 29, 2004; a security clearance application dated May 5, 2005; a questionnaire for public trust positions dated May 15, 2008; and an electronic questionnaire for investigations processing (e-QIP) dated June 30, 2010) Applicant

stated that he had never married. On all four applications, he also answered "No" to the question asking if, during the past seven years, he had been fired, quit a job after being told he would be fired, left a job by mutual agreement following allegations of misconduct, or left a job by mutual agreement following allegations of unsatisfactory performance. (GX 1; GX 4; GX 6; GX 7.)

On June 7, 2011, Applicant was interviewed by a DOD security investigator about his marital status, and he executed an affidavit on June 17, 2011, documenting the interview. (GX 3, Attachment 1.) He told the investigator that he met an Ethiopian woman in the summer of 2004 and decided to marry her after four or five months. He and the woman went through a marriage ceremony at a court house in Ethiopia in December 2004, planning to have a church ceremony at a later date. They were required to have three witnesses, and the ceremony lasted "a couple of hours." (Tr. 50-51.) At the hearing, he admitted that he believed that he was validly married under Ethiopian law when the ceremony was completed. (Tr. 82.)

After Applicant returned to the United States, he applied for a visa for his wife. He learned that she refused to provide her medical records to the U.S. embassy, and he later was informed that she was HIV[1] positive. In November 2005, he withdrew the visa application and told immigration authorities that his marriage was "cancelled." He told the DOD investigator that he did not believe he was married because they did not have a church wedding and never lived together or consummated the marriage. (GX 3, Attachment 1 at 4-5; AX B at 7-8; Tr. 51-52.) The investigator told Applicant that he needed to resolve the issue of his marriage to an Ethiopian woman. (Tr. 54.) On June 15, 2011 (eight days after Applicant was interviewed), his wife filed a petition for divorce in an Ethiopian court, and the divorce was granted on April 4, 2012. (AX B at 4-6.)

For about eight years, Applicant resided with a woman who was born in Ethiopia in 1977, came to the United States with her parents shortly after her birth, and became a U.S. citizen in January 2003. Her parents are deceased, and she has no siblings. (GX 2 at 3.) They have two children, ages five and three, who were born in the United States and are U.S. citizens. (GX 2 at 23-24; AX B at 9-13; Tr. 40.) They obtained a marriage license in April 2012, and they married on June 14, 2013 (ten days after the hearing). (AX B at 11; AX H.)

During a personal subject interview in July 2010, Applicant told the investigator that he did not list his cohabitant, now his wife, on his security clearance application due to an oversight. (GX 2 at 24.) When he responded to DOHA interrogatories in November 2012, he stated that he and his fiancée were not married, but had lived together for eight years and had two children. (GX 2 at 3.) However, when he visited his attorney's office in January 2013, he completed a "Client Background Data Sheet," on which he indicated that he was married in April 2012 to his current wife. (AX F; Tr. 101-03.) He testified that, when he obtained the marriage license in April 2012, he thought it was a marriage certificate, even though the bottom of the form, captioned "Marriage

[1] Human Immunodeficiency Virus.

Certificate" and containing spaces for the date and place of marriage was blank. (Tr. 34.) His attorney explained to him that the marriage license was not a certificate of marriage. (Tr. 17.)

During the July 2005 interview with AGA investigator, Applicant also told the investigator that he was fired from a job with a federal contractor in December 2003 for being late to work as a result of illness. (GX 5 at 1.) In an interview with a DOD investigator in June 2011, he did not mention being fired by this federal contractor. Instead, he told the investigator that he applied for a job with this federal contractor but never received a response. (GX 3, Attachment 1 at 7.) At the hearing, Applicant testified that he worked for this federal contractor as a second job in addition to his primary job. He worked on his second job for a couple of weeks but found that the job location was too far away. He told his supervisor that he could not handle the second job and asked to be relieved. According to Applicant, the supervisor asked him to wait a few weeks for a replacement to be found, and he agreed. Sometime later, Applicant called his manager, told him he was sick, and did not go to work. The next day, his supervisor called him, told him not to worry about the job, and told him that he would be contacted if they found another position that accommodated his schedule and was closer to his home. He had no further conversations with this employer. (Tr. 54-59.)

Applicant testified that he did not believe he had been fired. He also testified that he did not believe he was required to disclose this job on his security clearance applications because of its short duration. (Tr. 59.) He testified that he did not recall discussing this job when he was interviewed by another government agency in 2005. (Tr. 99.)

Applicant denied intending to conceal information on his various applications or deceive anyone, explaining that he misunderstood the questions about his marital status. He testified that he thought he was not required to disclose his first marriage because "that marriage was not materialized in the U.S." (Tr. 85.) His intention when he went through the marriage ceremony was to bring his wife to the United States and "finalize" their wedding. (Tr. 95.) He also testified that when he filled out various applications, he did not want to mention his first wife because she had deceived him and put him in a stressful situation, and he wanted to move on and "didn't want to remember anything about that." (Tr. 95-96.)

Ethiopia is a federal republic with a diverse population. It has an agrarian economy that suffers from lack of foreign exchange and high inflation. It is an important regional security partner of the United States. U.S. assistance to Ethiopia is focused on reducing famine vulnerability, hunger, and poverty. It emphasizes economic, governance, and social sector policy reforms. The United States provides some military training funds, but they are explicitly limited to non-lethal assistance and training. While Ethiopia is generally stable, insurgent and extremist groups pose considerable risks, especially in the border regions. Human rights problems in Ethiopia include suppression of political opposition, abuses by security forces, government corruption, and

infringement on citizens' privacy rights. The government does not punish officials who commit abuses other than corruption.

Eritrea is a poor and undeveloped country. It is a former province of Ethiopia that gained its independence in May 1993. It has an authoritarian government controlled by the president, who heads the sole political party and has ruled the country since 1991. There have been no elections since 1991. The United States has no military relationship with Eritrea and very little bilateral trade. Eritrea considers U.S. citizens born in Eritrea to be Eritrean citizens. In some cases, dual U.S.-Eritrean citizens have not been allowed to leave Eritrea and have been drafted into national service. Persons of dual nationality are at risk of being arrested for any reason or no reason, and are presumed guilty until proven innocent. The government-controlled media repeatedly broadcasts anti-U.S. rhetoric. Eritrea has not participated in any dialogue with the United States regarding terrorism and has not cooperated with U.S. antiterrorism efforts. Travelers in Eritrea are at risk of becoming victims of banditry, kidnapping, or insurgent activity.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the

applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The SOR alleges that Applicant's wife, parents, and two siblings are citizens and residents of Eritrea (SOR ¶ 1.a), one brother is a citizen of Eritrea residing in the United Kingdom (SOR ¶ 1.b), and one sister is a citizen of Eritrea residing in Switzerland (SOR ¶ 1.c). The security concern under this guideline is set out in AG ¶ 6 as follows:

> Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information

from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Two disqualifying conditions under this guideline are relevant to this case:

> AG ¶ 7(a): (contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion); and
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> AG ¶ 7(b): (connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information).

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

When family ties to a foreign country are involved, the totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). The evidence reflects that Applicant's sister is still an Eritrean citizen but moved to Kenya after the SOR was issued. The administrative notice documents submitted by Department Counsel contain no indication Eritrea is involved in economic or military espionage targeted against the United States. However, the presence of Applicant's parents and brother in Eritrea, the hostile, anti-U.S. stance of the Eritrean government, and the risks of banditry,

kidnapping, or insurgent activity in that country, are sufficient to establish the "heightened risk" in AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b).

AG ¶ 7(d) ("sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion") is not established. Applicant's wife is a resident and citizen of the United States. Her parents are deceased and she has no siblings.

Three mitigating conditions under this guideline are potentially relevant:

> AG ¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S;
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> AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and
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> AG ¶ 8(c): contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

AG ¶ 8(a) is established for Applicant's siblings who no longer live in Eritrea. However, it is not established for his parents and one brother who still live there.

AG ¶ 8(b) is established. Applicant feels no attachment or loyalty to Eritrea. To the contrary, he fled the country to avoid religious persecution. He has lived in the United States since 1995, became a citizen in 2004, worked for several defense contractors, and has held a security clearance since 2005. He has spent all his professional life in the United States. He recently married a U.S. citizen and his children are U.S. citizens. He has applied for visas for his parents to enable them to come to the United States. He has no assets in Eritrea but substantial assets in the United States.

AG ¶ 8(c) is not established. Applicant has regular contact with his parents and his siblings. He has not rebutted the presumption that contacts with an immediate family member in a foreign country are not casual. *See* ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

Guideline E, Personal Conduct

The SOR alleges that Applicant was fired from a job in March 2005 (SOR ¶ 2.a); that he falsified his responses to a question about his marital status on an application

for public trust position in December 2004; and that he falsified his responses to questions about his marital status and employment record on a security clearance application in May 2005, an application for a public trust position in May 2008, and a security clearance application in June 2010 (SOR ¶¶ 2.b-2.h.).

The concern under this guideline is set out in AG ¶ 15 as follows:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The relevant disqualifying condition for the alleged falsifications of applications for public trust positions and security clearance applications is AG ¶ 16(a):

> [D]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

When falsification allegations are controverted, as in this case, the Government has the burden of proving them. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's level of education and business experience are relevant to the determination whether a failure to disclose relevant information was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

I found Applicant's explanation for not disclosing his marriage to an Ethiopian in December 2004 implausible and unpersuasive. He believed he was married when he submitted an application for his wife's visa. He admitted that he was married during an AGA interview in July 2005. He admitted at the hearing that he believed he was married under Ethiopian law after completing the two-hour ceremony with three witnesses.

I have considered that, in January 2013, Applicant represented to his attorney that he was married to his current wife, based on the issuance of a marriage license. He has not plausibly or persuasively explained why he thought he could validly marry his current wife without terminating his first marriage. Furthermore, I am not persuaded that a possible misunderstanding of the procedural requirements for marriage in the United States shows that he did not believe that his Ethiopian marriage was valid. He demonstrated his belief that his Ethiopian marriage was recognized as valid under U.S.

law by submitting a visa application for his wife to U.S. immigration authorities in and admitting it during the July 2005 AGA interview. Even if he believed that he could unilaterally terminate his marriage by withdrawing the visa application, he has not plausibly or credibly explained why he stated on his various applications that he was "never married," instead of stating that his marriage was annulled or terminated by divorce.[2]

I found Applicant's explanation for not disclosing that he was fired from a job facially plausible, but the credibility of his explanation is undermined by his conflicting statements about the job. In July 2005, he told an AGA investigator that he was fired from a job in December 2003. However, in an interview with a DOD investigator in June 2011, he stated that he applied for the job but was not hired. At the hearing, he admitted that he was hired for the job, missed a day of work because of illness, and left the job under favorable circumstances. He could not explain the reference to being fired in the AGA interview summary, except to say that he did not recall discussing the job during the interview.

I have considered that Applicant grew up in a society and culture very different from the United States. However, he is a well-educated, mature adult with broad work experience, and he has lived in the United States for 18 years. I am satisfied that he intentionally omitted the information about his marriage in 2004 and his unfavorable termination of employment in December 2003, because those incidents were embarrassing and stirred up painful memories. As he stated at the hearing, he found the marital experience stressful, and he "didn't want to remember anything about that." I conclude that AG ¶ 16(a) is established.

The relevant disqualifying conditions for Applicant's unfavorable termination of employment in March 2005 are:

> AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;
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> AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an

[2] The e-QIP dated June 30, 2010, has a specific block for an annulled marriage. (GX 1 at 31.) Applicant's two applications for public trust positions had blocks for separated, legally separated, divorced, and widowed, but no specific block for an annulled marriage. (GX 4 at 5; GX 7 at 5.) His previous security clearance application simply asked the question, "What is your current marital status?" and Applicant stated, "Never married." (GX 6 at 3.)

> adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . a pattern of dishonesty or rule violations; and
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> AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

SOR ¶ 2.a alleges that Applicant was fired in March 2005, but there is no evidence in the record reflecting an unfavorable termination of any job in March 2005. However, Applicant admitted to the AGA investigator that he was fired by the same employer in December 2003. All the evidence regarding an unfavorable termination involves the same employer. Thus, I conclude that SOR ¶ 2.a is established, except for the date of the termination. For the reasons set out in the above discussion of AG ¶ 16(a), I conclude that AG ¶ 16(c), (d), and (e) are established by the evidence that Applicant was fired from a job in December 2003.

The relevant mitigating condition is AG ¶ 17(e) ("the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment"). I conclude that the evidence shows an isolated, minor incident of employee misconduct that happened long ago and has not recurred. Thus, I conclude that AG ¶ 17(e) is established for the termination of employment alleged in SOR ¶ 2.a, but it is not established for the repeated falsifications alleged in SOR ¶¶ 2.b-2.h. I need not determine whether Applicant was prejudiced by the variance in proof regarding the date of the incident alleged in SOR ¶ 2.a, because I am satisfied that SOR ¶ 2.a is mitigated. I am satisfied that the variance in proof did not prejudice Applicant regarding the falsifications alleged in SOR ¶¶ 2.b-2.h, because the falsifications involved the same employer, the record indicates that he had only one period of employment with that employer, and the termination of employment occurred within the seven years preceding his submission of the various applications.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline B and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guideline(s), but some warrant additional comment.

Applicant has worked for defense contractors for several years and gained a reputation for hard work, technical skill, honesty, and integrity. He has held a security clearance for many years. He is devoted to his parents, siblings, his current wife, and his children. However, his lack of candor through four iterations of applications and background investigations leaves me with doubts about his integrity, reliability, and trustworthiness.

After weighing the disqualifying and mitigating conditions under Guidelines B and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his foreign family ties, but he has not mitigated the security concerns raised by his lack of candor. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.h:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge